where, in any but a Pickwickian sense, they had continually been; secondly, because to allow such miscreants to escape just punishment for their misdeeds would be "a singular state of things," and would have surprised the judge who first laid down the doctrine as to *locus* of a crime of this sort. That judge was really in error; and his error the court should now "correct, not perpetuate," by surrendering these fugitives for trial in Tennessee.

These two arguments are examples of rather common misconceptions. The first would lead logically to this result, if applied to the sinking of a Chinese war-ship by a Japanese. Either the Japanese were on board the Chinese vessel when they fired the guns which sank the latter, or the damage was done on board the Japanese vessel; a sufficiently absurd dilemma. It is in fact quite possible for a man, even without the help of a human agent, to do something in a place where he is not present.

The argument *ab inconvenienti* indicates a praiseworthy but misplaced zeal that a wrongdoer should receive his just deserts. It is not the duty of a judge to deal out retribution for sin; perhaps that function cannot profitably be separated from omniscience, but at any rate it has never been committed to a court of common law. In punishing crime the court is dealing with an injury to the State whose law it administers. Killing a man in Tennessee is not an injury to North Carolina, and that a man should go unpunished for an offence against Tennessee should not officially concern a North Carolina judge, whether the man is on the east or the west side of the boundary line. In ordering the surrender of a fugitive the North Carolina court is still dealing with North Carolina law (or with an Act of Congress), and the effect of that law on the administration of justice in Tennessee cannot be considered. The legislature, not the court, considers Tennessee in the matter. These two judges could hardly with consistency object if a Tennessee officer should kidnap the defendants and carry them into Tennessee.

LIBEL BY EFFIGY. — The London newspapers last month contained accounts of the case of *Monson* v. *Madame Tussaud & Sons (Limited)*, a suit for libel which forms the last act in a *cause célèbre*. Mr. John Alfred Monson, as everybody knows, is the gentleman who figured as defendant in the sensational murder trial in Scotland a year ago, the charge being that he killed his pupil, Cecil Hambrough, while the two were on a hunting trip together. It appears that after his escape from that ordeal, with the ungracious verdict of "Not Proven," and after the failure of his suit to recover the insurance on the life of the very man he was charged with having murdered, the defendants, who are the proprietors of Tussaud's well known wax-works show, thought him a suitable subject for a wax figure in their establishment. Monson's own hunting suit and gun were procured to dress up the figure, and the whole was set off by a background representing the Scottish moor where the shooting occurred. According to the defendant's story, Monson sold them the clothes and gun for this very purpose; but however that may be, no sooner was the show well started than Monson brought his action for libel, the innuendo being that the defendants, by the exhibition of the effigy, meant that the plaintiff was a "notorious person connected with a tragedy that remained a mystery in a way that was discreditable." It is not clear why an innuendo that the defendants meant that Monson was a murderer would not have been

proper, nor why to the innuendo actually alleged the defendants could not have pleaded truth.

The case well illustrates the freedom with which English judges express their opinion on the facts at issue. The Lord Chief Justice, in summing up, asked the jury if they could have any doubt that the effigy was a libel, and on the question of damages said, in effect, that Monson was a fraud, a blackguard, and a fabricator, whereupon the jury at once returned a verdict for the plaintiff, damages one farthing. The distinction between a binding instruction and such unequivocal remarks as these seems a little shadowy, even making allowance for the English practice of commenting on the evidence. The Lord Chief Justice prefaced his charge with the observation that there was no class of cases in which the functions of the judge were more limited, and that the jury were the sole judges of whether the particular matter complained of was or was not a libel. They may have been, but they certainly received from the bench a significant hint of what was expected of them. The American practice of omitting all comment on the evidence is assuredly more in keeping with the general rule that questions of fact are for the jury, though doubtless there is much to be said from a utilitarian point of view for the sort of thing illustrated in this case.

AN AGENT'S AUTHORITY BY NECESSITY. — In the case of *Gwilliam* v. *Twist*, 11 *The Times* L. R. 208, the Court of Queen's Bench decided that the conductor of an omnibus has authority implied from necessity to appoint, in certain emergencies, a stranger to drive the vehicle back to the yard, and, as a consequence, to render his principal liable for the stranger's negligent conduct on the road. This decision, although apparently arrived at with some hesitation, seems so clearly right as to require no discussion; but the questions which it suggests are by no means so easily disposed of. Suppose it a cab instead of an omnibus, no conductor, and only an intoxicated driver, insensible from drink, — is it possible then to make the principal liable for a stranger's acts? Probably the same result would be arrived at. Story, for example, says (Agency, 6th ed., § 142): "In such cases, the stranger performs the functions of the *negotiorum gestor* of the civil law; and seems justified in doing what is indispensable for the preservation of the property, or to prevent its total destruction." Wharton, however, (Agency, § 355,) appears to disagree with this conclusion, and, indeed, if it is to be arrived at, it should not be on the analogy suggested. The Roman Law doctrine of *negotiorum gestio* hardly seems susceptible of being stretched beyond its legitimate limits, *i. e.* a quasi-contractual relation between the two parties alone, not extended to include outsiders; and most of the law on the Continent on this subject being statutory would seem equally inapplicable to the case. If Story's result is to be reached on contractual theories of agency, it can only be by an implication of what the principal should have meant had he thought about it, and not by a true inference from any actions or understanding on his part. Perhaps, on some other conception of agency, it may be more easily explained. At any rate, the result will probably be worked out on some such line, while the true basis on which the conclusion will be founded is a sound public policy which makes such a solution desirable.